IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 200 OF 2001

Vilas Mahadev Pawar. ... Applicant.

V/s.

Jivan Mahadev Kamble
and another. ... Respondents.

R.D.Suryawanshi for the applicant.

Prakash Gharge for respondent No.1.

Ms.M.M.Deshmukh, APP for the State.

CORAM: V.C.DAGA, J.

DATED: 17th July 2007.

P.C.:

. Heard learned counsel for the rival parties.

2. This revision application is directed against the order dated 4th April, 2001 passed by the learned Judicial Magistrate, First Class, Vaduj in Regular Criminal Case No.139/1998, whereby the respondent No.1- accused came to be acquitted of the offence punishable under section 326 of Indian Penal Code.

3. The learned counsel appearing for the applicant has taken me through the entire judgment and the evidence available on record. He has placed reliance on the medical evidence and that of P.W.7 to contend that the impugned judgment does not stand to

the scrutiny of law as such liable to be set aside.

4. I have gone through the evidence, judgment, and findings recorded therein. Both pieces of evidence were rightly appreciated by the trial Court which can be seen from the following paragraphs of the impugned order:

> "12. From the evidence on record, it is crystal clear that all the material eye witnesses turned hostile and not supported to the prosecution case. Also the panch witness i.e. i.e. P.W. No.3 Ambadas Bute turned hostile. Therefore spot panchanama are not proved. Further the P.W.No.4 Medical Officer has admitted that he has not mentioned in his medical certificate at Exh.26 that the accused was brought to him as per police yadi. Therefore, it is doubtful also the evidence of P.W.No.1 clearly shows that the he was admitted in the civil hospital only for 7 days and thereafter he was discharged and he was not indoor patient also there is no evidence on record to show that whether he was able to do daily persuies from the dates of the offence or not. Therefore, no witness has stated as to how the accused has assaulted to the injured complainant as the material witnesses are turned hostile and not supported to the prosecution case. Therefore, the testimony of the witnesses do not focus in bringing the guilt against the accused.
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> 13. Further it has come in the evidence of the injured complainant i.e. P.W. No.1 that the incident took place at about 9-00 a.m. in the broad day light in front of house of Jaysing Deshmukh near Chavadi Chowk. Therefore, as per his testimony it would been possible that many people would be present when the incident took place as such it is but natural that persons have witnesses the incident of assaulting to the injured complainant, however the prosecution has failed to examine any independent witnesses to corroborates the evidence of the injured complainant. therefore, in absence of any evidence corroborating to the evidence of complainant, his evidence is not free from

shadow of doubts. Also the panch witness P.W.No.3 turned Hostile, therefore panchanama cannot be relied and said be proved.

14. Further, it has stated by the P.W. No.7 Bhagwan Nathu Yadav at Exh.31 that he was present on the place of the incident but he contradicts his own statement that he contradicts his own statement that he firstly stated that he saw the accused was stabbing to the injured complainant any deposition he stated that he saw that the accused was running from the quarrel incident. And admitted his relations with the complainant. Therefore, his testimony cannot be believed as he had relations with the complainant and moreover, in his cross examination he has made it clear that his statement was recorded in his house and was not called by police in police station for recording his statement therefore his testimony cannot be believed as he is interested witness.

5. In my opinion, on proper appreciation of evidence acquittal of the accused is recorded by the trial Court. In the case of **C.P.Fernandes v. Union territory of Goa, Daman & Diu**, AIR 1977 SC 135, the Apex Court has ruled that the Court should not interfere with the trial Court view unless found to be unreasonable or perverse. If two views are possible on the basis of evidence on record, the higher Court should not disturb the findings of the trial Court is the settled law (see **Varghese Thomas v. State of Kerala**, 1977 SC 701).

6. Having examined the legal position, no fault can be found either with the appreciation of evidence or with the view taken. The view taken by the trial Court is reasonable and possible view in the facts and circumstances of the case which can be supported on the basis of evidence on record. No perversity or unreasonable approach on the part of the trial Court could be pointed out by the applicant.

7. In the above view of the matter, no case is made out to entertain this revision application. The same is dismissed in limine with no order as to costs.

JUDGE